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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,288	02/27/2004	Michael J. Sullivan	B04-07	8190

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EXAMINER

HUNTER, ALVIN A

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/789,288	Applicant(s) SULLIVAN, MICHAEL J.	
	Examiner Alvin A. Hunter	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.  
 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-11 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/27/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

It would appear as though this application should be a continuation-in-part and not a straight continuation as the subject matter of the claims is not supported by the parent application. In claim 1, the claim requires a "non-circular" dimple having lobes with curved outer segments which form a portion of the perimeter of the non-circular dimple. According to the disclosure, this can only reasonably be considered the embodiment in figure 7d. However, the lobes do not extend from a central hub as claimed. In the event applicant is intending the arms to be the lobes, these arms do not include the curved outer segments as claimed. Furthermore, the hub having a profile as set forth in claims 9-11 is not supported by the parent application. Accordingly, this application appears to be a continuation-in-part.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification does not provide antecedent for lobes extending from a central hub wherein radiating arm emanate from the center and the arms being within the lobes.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

How are the radiating arms emanating from the center wherein the dimple has a central hub? Claim appears to be unclear and therefore, has been rejected.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Barfield (USPN 6315686).

Regarding claim 1, Barfield discloses a golf ball comprising an outer surface with a plurality of non-circular dimples. The dimples are formed by a plurality of lobes **54** extending from a central hub **52** wherein each lobe is defined by a curved outer segment and the curved outer segments form at least a portion of perimeter of the dimples (See Figures 10-14).

Regarding claim 2, Barfield discloses the dimples comprising four lobes (See Figure 12).

Regarding claims 3-6, Barfield discloses a plurality of truncated radiating arms **58** emanating from a location proximate the center of the dimple wherein each lobe defines two truncated radiating arms (See Figures 11-13).

Regarding claims 7 and 8, Barfield discloses at least one radiating arm **58l** within a lobe extending from an apex point wherein the lobe is made up of **54k** and **54l** (See Figure 13).

Regarding claim 10, Barfield discloses the central hub being rounded and convex if the dimple is oriented in a direction opposite normal.

Regarding claims 9 and 11, Barfield discloses the central hub having a rounded and concave profile (See Figures 7-9).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-9, and 11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21-38 of U.S. Patent No. 6569038 in view of Barfield (USPN 6315686). Although the conflicting

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claims are not identical, they are not patentably distinct from each other because U.S. Patent No. 6569038 does not disclose the plurality of lobes extending from a round and concave hub. Barfield discloses a dimples having a plurality of lobes surrounding a rounded and concave central hub (See Figure 11-13). Barfield discloses the entire combination being necessary to increase the turbulence of the air flow and therefore, would be obvious to incorporate a central hub for such reason.

Claims 1-9 and 11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9-26 of U.S. Patent No. 6709349 in view of Barfield (USPN 6315686). Although the conflicting claims are not identical, they are not patentably distinct from each other because U.S. Patent No. 6709349 does not disclose the plurality of lobes extending from a round and concave hub. Barfield discloses a dimples having a plurality of lobes surrounding a rounded and concave central hub (See Figure 11-13). Barfield discloses the entire combination being necessary to increase the turbulence of the airflow and therefore, would be obvious to incorporate a central hub for such reason.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin A. Hunter whose telephone number is (571) 272-4411. The examiner can normally be reached on Monday through Friday from 7:30AM to 4:00PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Vidovich, can be reached on 571-272-4415. The fax phone

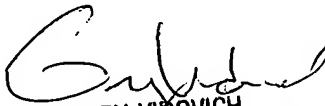
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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AAH

Alvin A. Hunter, Jr.

  
GREGORY W. KOVICH  
SUPERVISORY PATENT EXAMINER  
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